

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JOSEPH G. BEELER AND THERESA A. KISS,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 47469</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 3, 2007, Karen E. Hart, James R. Meurer, and MaryKay Kelley presiding. Petitioners appeared pro se. Respondent was represented by Robert H. Dodd, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax year 2005.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**136 East 11th Place, Broomfield, Colorado
(Broomfield County Schedule No. R1017462)**

The subject property is a residential site located in the Country Club Estates subdivision of Broomfield. Petitioners demolished the former 41-year-old house in November of 2004, leaving caissons and a concrete wall that were later removed. Prior to demolition, plans were submitted to the City of Broomfield for new construction. Final approval was granted in February or March of 2005, at which time construction began.

Respondent classified the subject property as vacant land and assigned a value of \$130,000.00 for tax year 2005. Petitioners are requesting residential classification.

The Broomfield County Assessor classified the site as vacant land for tax year 2005 because no residential structure was present on January 1, 2005, the assessment date. On appeal, the Assessor agreed that residential classification was appropriate and refunded \$2,087.36. The

Property Tax Administrator, citing Colorado Revised Statutes (“CRS”) section 39-1-105, denied the petition because no residential structure was in place or under construction at noon on January 1, 2005.

Respondent cited CRS section 39-1-102(14.4), defining “residential land” as “a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon.”

Petitioners, noting that caissons and a concrete wall remained after demolition, contend that the former structure was not fully demolished. The Board finds that these items are insignificant, were eventually removed, and that the original structure was fully destroyed. *See 2 Assessor’s Reference Library: Administrative and Assessment Procedures*, 6.6 (2003) (defining destroyed structures).

Petitioners note that temporary fencing, a construction trailer, and a portable toilet were on site at time of inspection and represented evidence of new construction. The Board finds that these items do not meet the definition of residential improvements and were not part of the intended use on completion. *See 2 Assessor’s Reference Library: Administrative and Assessment Procedures*, 6.6 (2003) (defining partially completed structures).

Petitioners testified that the county’s four-month delay in approving their plans caused the construction delay. The Board, while understanding that the timing of the improvement’s demolition and delay of start of new construction likely caused the property to remain vacant on January 1, must agree with Respondent’s application of the statutes and the Assessor’s Reference Library which states:

Structures that are fully destroyed prior to January 1 are removed from the assessment roll and the land is classified as vacant land for the current assessment year. Structures fully destroyed after January 1 are classified according to the use on January 1 of the current year. If the structure is not replaced, the land is classified as vacant land.

2 Assessor’s Reference Library: Administrative and Assessment Procedures, 6.6 (2003).

The Board is convinced that no improvements were in place on January 1, 2005. Lacking a residential structure, the subject property cannot be classified as residential.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified for tax year 2005.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Colorado Revised Statutes (“CRS”) section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Colo. Rev. Stat. § 39-10-114.5(2) (2006).

DATED and MAILED this 8th day of September 2007.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

[Signature]

James R. Meurer

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

SEP 07 2007

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

[Signature]

Heather Heinlein

